

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

THE CALIFORNIA INSTITUTE OF
TECHNOLOGY,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD. and
SAMSUNG ELECTRONICS AMERICA,
INC..

Defendants.

Case No. 2:21-CV-0446-JRG

JURY TRIAL DEMANDED

JOINT PROPOSAL REGARDING PRETRIAL PLAN

The parties respectfully submit this joint proposal in response to the Court's Order that the parties "suggest a structure for pretrial achieving a reasonable limit on the number of motions filed per party in this case." Dkt. 204. Lead counsel for both parties have met and conferred four times since the June 1, 2023 hearing, and have worked in earnest to develop a plan for streamlining the parties' pretrial briefing, narrowing the issues to be tried to the jury, and reducing the burden on the Court in preparing this case for trial. The parties have discussed ways to reduce the number of motions, briefing pages, and experts testifying to the jury, including by exchanging lists of the parties' proposed motions and discussing ways to focus the issues presented to the jury at trial. Based on those discussions, Caltech and Samsung jointly propose a three-part plan that includes limitations on summary judgment issues, restrictions on total briefing pages, and narrowing of testimony for the jury trial.

1. Limits On Issues For Summary Judgment. The parties agree to file no more than three summary judgment motions per side. This will reduce the number of issues for the Court's consideration before trial and allow the parties to focus their motions on issues that would streamline their trial presentations.

2. Limits On Page Limits For Summary Judgment And Daubert Motions. The parties agree to restrict the number of pages allotted to each party for summary judgment briefing, *Daubert* briefing, and motions to strike to a number below the limitations imposed by this Court's Local Rules. *See* E.D. Tex. L.R. CV-7(a). Each party has committed to filing no more than 75 pages for all dispositive and expert motions collectively. Specifically, the parties propose the following page limits on total opening briefing per party, with the same limitations applying to responsive briefing as well:

	Local Rules	Caltech	Samsung
Summary Judgment Motions	No more than 60 pages total	No more than 50 pages total	No more than 30 pages total
<i>Daubert</i> Motions /Motions to Strike	No more than 15 pages per expert	No more than 25 pages total for all experts, with no more than 15 pages per expert	No more than 45 pages total for all experts, with no more than 15 pages per expert

The parties will file all of their summary judgment and *Daubert* motions and motions to strike on any issue in this case by Wednesday, June 14, 2023, regardless of whether the issue relates to a factual issue for the jury, a legal issue for the Court post-trial, or a legal or equitable issue for the court to consider at a subsequent bench trial. However, if the Court agrees, it may defer argument on and disposition of any motions until after the jury trial relating to at least the following issues that the parties agree will be reserved for a bench trial, if warranted: (1) inequitable conduct; (2) patent misuse; (3) waiver; (4) acquiescence; (5) unclean hands; and (6) preclusion. The parties will meet and confer after the jury trial to determine what, if any, equitable issues need to be tried.

3. Narrowing Experts. The parties have agreed that neither party will call Patent Office practice and procedure experts—Mr. Andrew Hirshfeld (for Caltech) and Mr. Stephen Kunin (for Samsung)—at the forthcoming jury trial. Instead, testimony from those experts will be reserved to any bench trial, to the extent any such testimony is warranted, following the jury trial.

4. To allow adequate time for responses to each other's arguments, and in light of the new date for opening briefs set by the Court (Dkt 204), Caltech and Samsung jointly move the Court to extend the due date for summary judgment, *Daubert*, and motion to strike opposition briefs from June 21, 2023 to June 28, 2023. The parties have filed a separate motion to amend the Fourth Amended Docket Control Order relating to this request.

* * *

The parties appreciate the Court's concerns on the scope of the pre-trial and the need to have this case trial ready for the scheduled September 11, 2023 trial date. The parties believe this proposed structure to narrow the case will facilitate the Court's and parties' goal of preparing this case for trial while minimizing the burden on judicial resources. A proposed order implementing the parties' proposed three-part plan is attached. The parties will continue to confer on narrowing the issues for pretrial and trial, including after review of the motions filed on Wednesday, June 14, 2023.

DATED: June 12, 2023

Respectfully submitted,

/s/ Kalpana Srinivasan

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served on all counsel of record who have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3) on June 12, 2023. Any other counsel of record will be served by facsimile transmission or by first class mail.

/s/ Melissa R. Smith
Melissa R. Smith